

# REGULATORY ASSIGNMENT CONTROL SHEET

LOG CONTROL NUMBER: 96 ANALYST  
ASSIGNED: WASHINGTON

ACTION: NPRM

TITLE: MIGRANT STUDENT INFORMATION EXCHANGE  
(MSIX)

RECEIVED: 3/4/2009

DATE ASSIGNED: 3/4/2009

DATE DUE: 3/16/2009

ANALYST SIGNATURE:

J. Washington

COMPLETION DATE:

3/13/2009

FINAL APPROVAL:

Angela Arington

DATE: 3-13-09

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REG PART:

N/A

REGULATIONS CLEARANCE SHEET  
OFFICE OF THE GENERAL COUNSEL  
DIVISION OF REGULATORY SERVICES (DRS)

DRAFT NO.: 1

DATE: March 4, 2009

Please review the attached document, check the appropriate box below, sign, and return with your comments, if any, to Room. 6E248 or e-mail your response and any comments to Debra Hoosier-Nickerson. Your response is due by C.O.B. Monday, March 16, 2009.

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[X]

**Office of the Deputy Secretary**

[X]

cc:

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**Program Contact: Jennifer Dozier**

**CHECK ONE**

☒ Approved ☐ Approved subject to minor changes ☐ Not approved—see comments

**TYPE AND TITLE OF DOCUMENT:** OESE Migrant Student Information Exchange (MSIX)

Notice of Proposed Rulemaking (NPRM)

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

COMMENTS:

4000-01-U

DEPARTMENT OF EDUCATION

34 CFR Part 200

RIN 1810-AA99

Title I--Improving the Academic Achievement of the  
Disadvantaged (Subpart C--Migrant Education Program)

AGENCY: Office of Elementary and Secondary Education,  
Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes regulations to implement the Migrant Student Information Exchange (MSIX). MSIX is a Congressionally-mandated, electronic, national migrant student records exchange mechanism that will allow school staff in different States to electronically exchange basic health and educational information on migratory children to facilitate their timely school enrollment, placement, and accrual of secondary course credits. In addition to other requirements, these proposed regulations would require both the electronic input of minimum health- and education-related data elements into State migrant student record systems and the time-frames in which this must be done to permit transmission to the MSIX.

DATE: We must receive your comments on or before (INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER).

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by e-mail. Please submit your comments only one time to ensure that we do not receive duplicate copies. In addition, please include the Docket ID at the top of your comments.

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>, select "Department of Education" from the agency drop-down menu, then click "Submit." In the Docket ID column, select [insert the Docket ID of the NPRM] to add or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for submitting comments, accessing documents, and viewing the docket after the close of the comment period, is available through the site's "User Tips" link.

- Postal Mail, Commercial Delivery, or Hand Delivery. If you mail or deliver your comments about these proposed regulations, address them to Daryn Hedlund, U.S. Department

of Education, 400 Maryland Avenue, SW., room 3E339, FB6,  
Washington, DC, 20202-6135.

Privacy Note: The Department's policy for comments received from members of the public (including those comments submitted by mail, commercial delivery, or hand delivery) is to make these submissions available for public viewing on the Federal eRulemaking Portal at <http://www.regulations.gov>. All submissions will be posted to the Federal eRulemaking Portal without change, including personal identifiers and contact information.

FOR FURTHER INFORMATION CONTACT: Daryn Hedlund.

Telephone: (202) 401-3008 or via Internet:

Daryn.Hedlund@ed.gov

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., braille, large print, audiotape, or computer diskette) on request to the contact person listed under FOR FURTHER INFORMATION CONTACT.

#### Invitation to Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge

you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed regulations in room 3E315, FB-6, 400 Maryland Ave., SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays. Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an

appointment for this type of aid, please contact the person listed under FOR FURTHER INFORMATION CONTACT.

SUPPLEMENTARY INFORMATION:

The children of migratory agricultural workers and migratory fishers present unique challenges for educators and our Nation's schools. Migratory workers travel from community to community in search of temporary and seasonal work. Given the nature of their employment, migratory workers and their families often settle in a single community for a short period of time. One consequence of this lifestyle and mobility is that the children of migratory workers often enter new schools without adequate, and in many cases any, documentation of their educational and health history.

For school-aged migratory children, this lack of educational and health-related information may cause delays in student enrollment, lead to inappropriate classroom and course placements, complicate the accrual of high school course credits, and result in duplicated services, such as multiple assessments and immunizations. Migrant educators believe that this lack of immediate access to records upon a change in school is particularly detrimental to highly mobile secondary school students because schools in which these students have enrolled need these records to support

critical course selection and grade placement decisions, and the accrual of course credits to help them graduate from high school.

In section 1308(b)(1) of the Elementary and Secondary Education Act (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB), Congress directed the Secretary to "assist the States in developing effective methods for the electronic transfer of student records and in determining the number of migratory children in each State." In addition, in section 1308(b)(2) of the ESEA, Congress directed the Secretary, in consultation with the States, to "ensure the linkage of migrant student record systems for the purpose of electronically exchanging, among the States, health and educational information regarding all migratory students." The provision also requires that the linkage of migrant student record systems occur in a cost-effective manner, utilizing those systems that States used before the enactment of NCLB or that are developed afterwards. In addition, Congress directed the Secretary to establish a set of "minimum data elements" (MDEs) that each State receiving Migrant Education Program (MEP) funds under Title I, Part C, of the ESEA would need to collect for the purposes of the electronic transfer of migrant student information. On May 28, 2002, the Department



published a Notice of Proposed Requirements and Minimum Data Elements for an Electronic System of Records Transfer and Request for Comments in the Federal Register (67 FR 36862-89). Since then, the Department has spent considerable time and attention addressing concerns raised by State officials, school guidance counselors, school registrars, MEP administrators, migrant health officials, and other users of student data about the proposed MDEs, and how the mechanism for linking State electronic migrant student record systems would operate.

Through this consultative process, the Department has determined that the primary purposes of the new mechanism for linking State electronic migrant student record systems should be to provide school and migrant education personnel with the data essential to facilitate-

- (1) the timely enrollment of school-age migrant children;

- (2) the placement of migrant students in the appropriate grade level and courses of instruction; and

- (3) for secondary students only, the accrual of course credits needed to graduate from high school.

The Department also learned from migrant educators that while school staff need basic school enrollment data and proof of immunizations for all newly enrolled migrant

children so that they can place those students in the correct grade or course in a timely manner, migrant students enrolled in the secondary grades have the greatest need for the timely exchange of student records. For example, school district staff need student records on secondary migrant students to support critical course selection, placement decisions, and the accrual of course credits needed to help those students graduate from high school. Moreover, because these records already tend to be available to local educational agencies (LEAs) and local operational agencies (LOAs) within the same State, the need for States and school districts to share the records of migrant students is viewed as a much more critical problem for students who have moved interstate. In this regard, educational records on secondary migrant students are often needed in the summer, when many migrant programs are conducted but also when many schools that those students had last attended are closed. These circumstances present additional impediments to migrant program staff being able to obtain the student records they need in order to ensure migrant students receive the most appropriate grade and course placements and services.

In response to the requirements of section 1308(a) and (b) and the comments and suggestions of State and local

stakeholders, the Department has developed a national electronic information exchange for migrant children known as the Migrant Student Information Exchange (MSIX). MSIX, which is now operational, is a Web-based application to which State educational agencies (SEAs) transmit certain information provided by LEAs and LOAs on the migrant children who reside in their State. Under these proposed regulations, and consistent with section 1308(b)(2) of the ESEA, SEAs would need to transmit to MSIX the MDEs approved by the Secretary; likewise, LEAs and LOAs would need to provide the same information to their State migrant student record systems.

Through its consultation with State officials and school district staff, the Department worked extensively to identify those MDEs that States would have to collect and maintain to support the primary purposes of enrollment, grade/course placement and accrual of secondary school course credits. Based on these discussions and its review of public comments provided on the 2002 notice, the Department has identified 66 data elements that States need to provide to MSIX for their migrant children. These MDEs are described in the MSIX Information collection notice (OMB Approval Number 1810-0683). Using the MDEs, MSIX is able to generate a consolidated migrant student record that

SEAs and LOAs can use to promote proper enrollment, grade/course placement, and accrual of secondary school course credits for any given migrant child.

The remainder of this notice describes more specifically the Department's proposal to create a new § 200.85 of the MEP regulations to implement MSIX and to facilitate records exchange activities among the States. In doing so, we propose to move the existing requirements in § 200.85, which concern the responsibilities of SEAs and LOAs for improving services to migratory children, to § 200.84, which concerns the responsibilities of SEAs for evaluating the effectiveness of the MEP.

#### PROPOSED REGULATIONS

##### Title I, Subpart C - Migrant Education Program

§ 200.85 Responsibilities of SEAs for electronically exchanging educational and health-related information of migratory children.

Current Regulations: Current § 200.85 clarifies the statutory responsibilities of an SEA receiving MEP funds to use evaluation results to improve services provided to migratory children.

Proposed Regulations: We would combine the current § 200.85 (Responsibilities of SEAs and operating agencies for improving services to migratory children") with current

§ 200.84 ("Responsibilities of SEAs for evaluating the effectiveness of the MEP"), into a new § 200.84. We also would include the proposed regulations governing MSIX in a new § 200.85, "Responsibilities of SEAs for electronically exchanging educational and health information of migratory children".

Proposed § 200.85(a) would require each SEA that receives MEP funds to develop and implement an electronic migrant student records system that collects certain health and educational information on migratory children who reside in the State that corresponds to the MDEs the Secretary has established. The proposed regulations also would prescribe how each SEA must make this information available to MSIX on a complete and timely basis so that MSIX may provide this information electronically to other States to which migrant children have moved.

Reasons: Most States currently have electronic databases with migrant student records. However, these databases do not uniformly contain all of the MDEs that the Department has established in consultation with representative State officials as well as school counselors and educators who work with migrant students.

Through this consultative effort, we have identified 66 minimum data elements that all SEAs receiving MEP funds

would be required to collect and maintain in their own state systems and subsequently transmit to MSIX on their migrant children. The Department has already received approval under the Paperwork Reduction Act to require the collection and maintenance of these minimum data elements. (See the "Paperwork Reduction Act of 1995" section of this notice.) We believe that these 66 data elements reflect the data that are minimally necessary to ensure the proper enrollment, grade/course placement, and accrual of secondary course credits for all migratory children. Moreover, because all migrant children may move on an interstate basis, SEAs will need to provide a portion of this information (i.e., student information, school/project enrollment information, and assessment information) to MSIX for all children they identify.

Finally, if school educators are to receive information through the MSIX that improves the enrollment, instruction and placement of migrant students, the information received must be complete, reliable, accurate, and current. These proposed regulations would require SEAs and LOAs to provide information to MSIX that meets these tests.

Proposed Regulations: Proposed § 200.85(b) would require each SEA to electronically transmit the MDEs to

MSIX in the format prescribed by the Secretary, and within a specified time-frame. (NOTE: The minimum data elements as currently approved for collection by the Office of Management and Budget (OMB) under OMB Approval No. 1810-0683 are contained in the Appendix to this notice.)

Proposed § 200.85(b)(1)(A) would require SEAs to transmit to MSIX the MDEs regarding student information, school/project enrollment information, and assessment information within ten working days of a State's initial determination of a migrant child's eligibility for the MEP.

Proposed § 200.85(b)(1)(B) would require SEAs to update MSIX with all of the MDEs described in subsection (b)(1)(A) for all migratory children who reside in the State, after that data are officially available (i.e., when individual student data is "released" for official SEA uses), and at a minimum within 30 calendar days of the end of the LOA's fall semester, spring semester, and, where applicable, summer or intersession term in which the students were enrolled during that semester or term. It also would require SEAs within this same time-frame to update the course history information for secondary students who have made an interstate migratory move within the past three years.

Reasons: MSIX can meet its intended purpose of promoting proper enrollment, grade/course placement, and credit accrual only if SEAs transmit to MSIX accurate records reflecting the minimum data elements in a timely manner. Although MSIX will transmit all its information on a particular child to a school or local agency that requests them, SEAs must provide new or updated information on identified migrant children to MSIX within a reasonable time frame. We believe that this time-frame depends on the kinds of records to be collected and transmitted. Those that are most critical to proper enrollment, grade or course placement, or to credit-accrual decisions need to be immediately available to requesting schools and local agencies. Other records, such as those that are less critical and whose immediate collection by school or local agency staff would create burdens that outweigh their immediate usefulness, should be able to be collected and transmitted later to MSIX.

In this regard, proposed § 200.85(b)(1)(A) identifies the types of basic critical information on each migrant child that we would require SEAs to collect and transmit to MSIX within a minimum time-frame of ten working days from the date that the State initially determined the child to be eligible for the MEP. This information consists simply



of data among the MDEs that identify the child, as well as school and project enrollment, and assessment data.

Proposed § 200.85(b)(1)(B) provides for regular SEA updating of MSIX with this same information for all migrant children within 30 calendar days of the end of the fall semester, spring semester, and summer or intersession term of the LEA in which the students were enrolled during that semester or term. This kind of regular updating for all migratory children is needed to ensure that the information in MSIX that SEAs or LOAs in other States may request on the arrival of a migrant child is current and reliable. Of course, while MSIX needs to hold records on all migrant children in case they do make interstate moves to locations where new LEA or local agency staff will want to review those records, not all migrant children will make such a move. In this regard, we believe that 30 days from the end of the LEA or local agency's semester or term is a reasonable time-frame. To us, this time-frame reflects an appropriate balance between the need for records in MSIX to remain current and the need for local agency staff, who cannot predict for which students these records will be requested, to manage their time and workloads.

Proposed § 200.85(b)(1)(B) also requires special reporting or updating of data on course history for

migratory secondary students who made an interstate migratory move within the past three years. Through its prior exchanges with the public, the Department learned of the special focus that the migrant records exchange should have on providing information necessary for credit accrual of highly mobile secondary students. While migrant students at elementary grades also need instructional continuity, the instructional demands of these students can normally be addressed through basic and supplemental MEP education services and other means. However, at the high school level special difficulties arise from the lack of prior course history that should help to guide timely and appropriate student placement and the awarding of course credit. Thus, this proposed regulations would require States to also update course history information for highly mobile migratory secondary students within 30 calendar days of the end of a school semester or term.

Proposed Regulations: As discussed immediately above, proposed § 200.85(b)(1) addresses responsibilities for SEA reporting the MDEs to MSIX for all migratory children it has identified as residing in the State. Proposed § 200.85(b)(2) addresses the need for the SEA to update these records when it receives notice through MSIX that a child whom the SEA had previously identified as migrant has

been identified in another State. This transmission would have to occur within four working days of the date that an SEA receives notification from MSIX that another State has identified the child as migrant or within four working days after that data are officially available to the SEA, whichever is earlier.

Reasons: For MSIX to meet its intended purposes of promoting proper enrollment, grade/course placement, and credit accrual, the records it makes available to personnel in each State needs to be timely and accurate. Doing so requires not only that each SEA, as we propose in § 200.85(b)(1), take responsibility for regular transmittal to MSIX of records that reflect the MDEs relative to each migrant child in the State, but also requires that the SEA ensure that LEAs and other LOAs quickly update their records as soon as the SEA learns that one of its State's migrant children has been identified in another State.

Therefore, the Department further proposes in § 200.85(b)(2) a minimum time-frame of four working days for the SEA, once it receives notification from MSIX that another State has identified the child as migrant, to transmit to MSIX any changes or updates to the MDEs regarding that child. We recognize that this is a short time-frame to do the collection; however, school personnel

in the other State need this critical information available on the most mobile migratory children as soon as possible to ensure that they can make the most appropriate decisions regarding proper enrollment, grade/course placement, and accrual of secondary course credits.

Proposed Regulations: Proposed § 200.85(c) would require SEAs to use the MSIX consolidated migrant student record in their efforts to ensure proper enrollment, grade/course placement, and accrual of credits of all migratory children, and to ensure that local staff are properly trained to use the consolidated student record.

Reasons: Migratory children will only benefit from the development and implementation of MSIX if States use the system for its intended purposes -- ensuring that interstate migratory students receive proper enrollment, grade/course placement, and accrual of credits. Therefore, these regulations would require each SEA and LOA to use the information available through MSIX -- that is compiled from the minimum data elements submitted by states for a child-- also referred to as the "consolidated migrant student record" for these purposes. Because staff of these agencies will not necessarily know how to do so, we also would require SEAs to establish procedures, develop guidance, and train appropriate staff on how to use the

MSIX online system as well as the information contained in the consolidated migrant student record.

Proposed Regulations: Proposed § 200.85(d) would require SEAs to establish procedures to ensure that electronic and print versions of the MSIX consolidated migrant student record are accessible only to authorized users; used only for authorized purposes; and protected in accordance with the Family Educational Rights and Privacy Act (FERPA) and the Interconnection Agreement and Interconnection Security Agreement that the SEA and the Department have executed.

Reasons: Because the consolidated migrant student record contains personally identifiable information on each migrant child, States must ensure that both electronic and print versions of these documents are only used by authorized users and for authorized purposes as identified in the MSIX Rules of Behavior. States must also take appropriate measures to protect the confidentiality of information in these records in accordance with FERPA and the Interconnection Agreement and Interconnection Security Agreement that the SEA has executed.

Proposed Regulations: Proposed § 200.85(e) would require each SEA to establish procedures for promptly correcting any errors in its electronic migrant student

records system that are identified by a migratory child, parent, or guardian, or by administrative personnel and re-transmitting that corrected data to MSIX within four working days.

Reasons: The accuracy and reliability of the information contained in the consolidated migrant student record will be dependent on the accuracy and reliability of the information that States transmit to MSIX. Therefore, to ensure that the information that SEAs submit to MSIX is correct, we would require SEAs to establish procedures for promptly correcting errors that are identified by a migratory child, a parent or guardian, or by administrative personnel.

Proposed Regulations: Proposed § 200.85(f) would require each SEA to collect certain information from prospective users of the MSIX and authorizing officials, specified on the Department-approved User Application Form, before providing those individuals a password with which they might access migrant student records from MSIX. The provision also establishes a minimum retention period for this documentation of three years from the date the SEA approved the individual's access to MSIX.

Reasons: In order to ensure that the Department may effectively monitor use of the MSIX as well as promptly

respond to any actual or perceived security breaches, requirements are needed to ensure that each SEA maintains certain minimum documentation that identified proposed users and their authorizing supervisors. The OMB-approved User Application Form (OMB Approval No. \_\_\_\_\_, Approved until \_\_\_\_\_) contains the minimum information the Department needs for this purpose - including a certification signed by the proposed user to abide by the MSIX Rules of Behavior. Under proposed 200.85(f), an SEA may use either this OMB-Approved form or other document the SEA has developed that contains the information contained on it.

So that the Department may gain access to these records when and if needed, consistent with the general three-year record-retention period in 34 CFR 80.42, the proposed regulations also establish a minimum three-year retention period starting with the date the SEA approved the prospective user's access to the MSIX.

Finally, SEAs would need to enable ED to meet its responsibilities for MSIX under 5 U.S.C. § 552a(e)(10) (the Privacy Act) by establishing appropriate administrative, technical, and physical safeguards to ensure the security and confidentiality of records in the State's information system that interconnects with MSIX and to protect against

any anticipated threats or hazards to the security or integrity of MSIX, which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained.

#### Executive Order 12866

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may (1) have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments, or communities in a material way (also referred to as an "economically significant" rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order. The Secretary



has determined that this regulatory action is significant under section 3(f)(4) of the Executive order.

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of the order we have assessed the potential costs and benefits of this regulatory action.

#### 1. Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action. The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined to be necessary for administering this program effectively and efficiently. Elsewhere in this SUPPLEMENTARY INFORMATION section we identify and explain burdens specifically associated with information collection requirements. See the heading Paperwork Reduction Act of 1995.

In assessing the potential costs and benefits--both quantitative and qualitative--of this regulatory action, we have determined that the benefits would justify the costs.

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

## Summary of Potential Costs and Benefits

These proposed regulations implement the MSIX and require SEAs to establish specific procedures to electronically transmit MDEs within a specific timeframe to standardize and improve the accuracy of information needed for the enrollment, placement, and accrual of credits for interstate migratory children. The primary impact of the regulations is on SEAs that receive MEP funds and the children who are eligible for services under the MEP. By requiring SEAs to establish procedures and adhere to timelines in transmitting data to MSIX, the regulations will ensure that program funds and the services they fund are used to facilitate the timely enrollment, placement and accrual of credits for the most mobile migrant children. The proposed regulations would also add clarity where the statute is ambiguous or unclear.

The Department estimates that the additional annual cost to recipients to comply with these regulations will be approximately \$2.38 million:

Transmitting student information, school/project enrollment information, and assessment information to MSIX within 10 days of the child's initial enrollment [Sec. 200.85(b)(1)(A)] will cost approximately \$5,455,459 annually;

Updating all minimum data elements within 30 calendar days of the end of each semester, trimester, or summer/intercession term and updating course history information for migratory secondary students who made an interstate move within the past three years [Sec. 200.85(b)(1)(B)] will cost approximately \$3,689,716.

Updating minimum data elements on students who make an interstate move within 10 days [Sec. 200.85(b)(2)] will cost approximately \$922,429.

This estimate is based on and further explained in the information collection package required under the Paperwork Reduction Act of 1995 and discussed in more detail elsewhere in this notice.

The Department believes the activities required by the proposed regulations will be financed through the appropriation for Title I, Part C (MEP) and the MSIX Data Quality Grant and will not impose a financial burden that SEAs and LOAs will have to meet from non-Federal resources.

As noted in numerous studies since the nineteen sixties,\1\ the migratory children who are eligible to receive program benefits constitute a particularly needy and vulnerable school population. Migrant families tend to live in poverty, speak limited English, and lack access to preventive medical care. Few children from migrant families

attend preschool, and they are often enrolled in high-poverty schools. Migratory youth are at high risk for dropping out of school without attaining a high school diploma. Access to education can help mitigate the effect of these risk factors. Preschool education prepares small children for the demands of elementary education and encourages parents to become active learners along with their children. Children who receive educational services targeted to address their specific needs are more likely to be successful in school and to receive other marginal services, such as vaccinations and health screenings, that are associated with school attendance. Youth who complete high school generally earn more in their lifetime than those who don't earn a high school diploma. These regulations benefit society because they require safeguards to ensure that the most mobile migrant children will be identified and provided continuity of education as they travel across state lines to attend school.

There is also a potential cost to migratory children if these regulations are not enacted. In the absence of regulations, recipients have not developed electronic systems that allow for the national exchange of migrant student records on an interstate basis. Thus, migrant students who make interstate moves do not always have their

records immediately available to the educators at their new school. As a result, students are often placed in incorrect courses or grades. Particularly in the case of secondary students, student often become discouraged and may drop out of school.

The potential costs associated with the final regulations are those resulting from statutory requirements and those we have determined to be necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits--both quantitative and qualitative--of these final regulations, we have determined that the benefits of the regulations justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

## 2. Clarity of the regulations

Executive Order 12866 and the Presidential memorandum on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including

answers to questions such as the following:

- o Are the requirements in the proposed regulations clearly stated?
- o Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- o Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- o Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections?  
(A "section" is preceded by the symbol "\$" and a numbered heading; for example, \$ 200.85.)
- o Could the description of the proposed regulations in the "Supplementary Information" section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- o What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the ADDRESSES section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities because these proposed regulations affect SEAs primarily. SEAs are not defined as "small entities" in the Regulatory Flexibility Act. The only small entities that could be subject to the proposed regulations would be small LOAs that receive MEP subgrants from the SEA or receive MEP funding through other financial arrangements. These entities would be required to provide data on migrant students that correspond to the minimum data elements into a State's data system under time-frames identified in the proposed regulations; primarily however, the costs of doing so would likely be financed through the State's Title I, Part C, MEP award, and so would not impose a financial burden that a small entity would have to meet from non-Federal resources.

#### Paperwork Reduction Act of 1995

Proposed § 200.85 contains several information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to OMB for its review.

The title for the collection of information is Migrant Student Information Exchange (MSIX). Respondents consist

of SEAS and LOAs. The collection of information is necessary to implement MSIX. The proposed frequency of response is Weekly or Nightly Database Submissions.

The estimated total annual reporting and recordkeeping burden that will result from the collection of information is 382,508 hours. The estimated average burden hours per response are 17,885 per SEA for \$ 200.85. The estimated number of likely respondents are 49 SEAs. \$ 200.85.

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education. You may also send a copy of these comments to the Department representative named in the ADDRESSES section of this preamble.

We consider your comments on these proposed collections of information in--

- Deciding whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical use;
- o Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of



our methodology and assumptions;

- o Enhancing the quality, usefulness, and clarity of the information we collect; and
- o Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the Federal Register. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

#### Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local

governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

#### Federalism

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications. "Federalism implications" means substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. The proposed regulations in § 200.84 may have federalism implications, as defined in Executive Order 13132. We encourage State and local elected officials to review and provide comments on these proposed regulations.

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(Catalog of Federal Domestic Assistance Number 84.011:  
Title I, Education of Migrant Children.)

List of Subjects in 34 CFR Part 200

Children, Education of children with disabilities,  
Education of disadvantaged children, Elementary and  
secondary education, Eligibility, Family, Family-centered  
education, Grant programs-education, Institutions of higher  
education, Interstate coordination, Intrastate  
coordination, Local educational agencies, Local operating  
agencies, Migratory children, Migratory workers, Nonprofit

private agencies, Reporting and recordkeeping requirements, State-administered programs, State educational agencies, Subgrants.

Delegation of Authority: The Secretary of Education has delegated authority to Joseph C. Conaty, Director, Academic Improvement and Teacher Quality Programs for the Office of Elementary and Secondary Education to perform the functions of the Assistant Secretary for Elementary and Secondary Education.

Dated:

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Joseph C. Conaty,  
Director, Academic  
Improvement and Teacher  
Quality Programs.

For the reasons discussed in the preamble, the Assistant Secretary for Elementary and Secondary Education proposes to amend part 200 of title 34 of the Code of Federal Regulations as follows:

PART 200--TITLE I--IMPROVING THE ACADEMIC ACHIEVEMENT OF THE DISADVANTAGED

1. The authority citation for part 200 continues to read as follows:

Authority: 20 U.S.C 6301 through 6578, unless otherwise noted.

2. Amend § 200.84 as follows:

a. Revise the section title to read as follows:

§ 200.84 Responsibilities of SEAs and local operating agencies for evaluating the effectiveness of the MEP and using evaluations to improve services to migratory children.

b. Redesignate the text of § 200.84 as subsection (a) of § 200.84.

c. Redesignate the text of § 200.85 as subsection (b) of § 200.84.

3. The authority citation for § 200.84 continues to read as follows:

(Authority: 20 U.S.C. 6394)

4. Revise § 200.85 to read as follows:

§ 200.85 Responsibilities of SEAs for electronically exchanging health and educational information of migrant children.

(a) Use of an electronic migrant student records system. Consistent with the requirements of this section, each SEA that receives Title I, Part C funds must--

(1) Use an electronic migrant student records system that will permit the electronic exchange among the States of health and educational information on all migratory children who reside or have resided in the State in the timeframes specified in this section, and

(2) Collect and maintain in its electronic migrant student records system complete and accurate records that reflect the minimum data elements as required by the Secretary on all of the State's migratory children.

(b) Submission requirements. Each SEA must electronically transmit the minimum data elements on migratory children to MSIX in the format and manner required by the Secretary (and consistent with the State's interconnection agreement and interconnection security agreement), and in the following time-frames:

(1) A State's own migratory children.

(i) Newly identified children. Within ten (10) working days of a State's initial determination of a migratory child's eligibility for the MEP, the SEA must transmit to MSIX the minimum data elements in the following categories:

- (A) Student information;
- (B) School and MEP Project enrollment information;
- and
- (C) Assessment information.

(ii) All migratory children. At a minimum, within 30 calendar days of the end of the fall semester, spring semester and, where applicable, summer or intersession term of the LEA in which migratory students were enrolled during that semester or term, the SEA must provide an update to MSIX of—

(A) All of the minimum data elements described in subsection (b)(1)(i) for all migratory children who reside in the State, and (B) minimum data elements on the course-history information for migratory children who are secondary students and who made an interstate migratory move within the past three years.

(2) Migratory children identified in other States. Within four working days of the date an SEA receives notification from MSIX that a child who was previously

identified as residing in the State has been identified as residing in another State, the SEA must transmit to MSIX any updates to all of the minimum data elements identified in --

(i) Subsection (b)(1)(i) for any migrant student, and

(ii) Subsection (b)(1)(ii) for any migrant secondary school student.

(c) Use of the consolidated migrant student record.

Each SEA must--

(1) Use the consolidated migrant student record available through MSIX to help ensure proper enrollment, grade/course placement, and accrual of credits of all migratory children who have moved from one State to another State, and

(2) Establish procedures, develop guidance, and provide training to appropriate LEA and school personnel who have been designated by the SEA as authorized MSIX users (e.g., registrars, counselors, teachers, health care professionals, and MEP personnel) to ensure that these staff use the consolidated migrant student record for these purposes.

(d) Protection of data. Each SEA must establish procedures to ensure that the content of the consolidated



migrant student record, whether in electronic or print format, is--

- (1) Accessible only to authorized users;
- (2) Used only for authorized purposes;
- (3) Protected in accordance with the Family Educational Rights and Privacy Act (FERPA); and
- (4) Protected in accordance with the Interconnection Agreement and Interconnection Security Agreement.

(e) Correction of errors. To ensure the accuracy of data contained in the State electronic migrant student record system and data transmitted to MSIX, each SEA must establish and implement procedures for promptly correcting any errors in student information contained in its electronic migrant student records system and re-transmitting the corrected data to MSIX within four working days that are--

- (1) Collected under this section; and
- (2) Identified by a migratory child, parent, or guardian, or by LEA or school personnel.

(f) State Retention of Documentation Regarding Authorized Users. Each SEA must--

- (1) Before providing to any proposed user of MSIX a password with which to access information on migrant students from MSIX, obtain the information about the

proposed user and his or her authorizing official, including signatures, as required on the User Application Form that the Secretary has approved. In implementing this provision, an SEA may utilize the approved User Application Form or other documentation it develops that contains the information on the approved User Application Form, and

(2) Retain the documentation identified in paragraph (a) for no less than three years from the date the SEA authorizes the individual to have access to MSIX, and any further period as specified in 34 CFR 80.42.

(g) State Considerations Regarding the Privacy Act. Each SEA must--

(1) Make reasonable efforts to ensure all data input into MSIX, is accurate, timely, complete and relevant - so that MSIX is fully responsive to the needs of its users and to assist the Department in fulfilling its obligations under the Privacy Act. These measures include:

(a) Promptly providing the Department or its contractor or the SEA, as appropriate, with any information necessary to investigate whether to revise any allegedly inaccurate record or to respond to requests to amend any record in MSIX, as may be applicable;

(b) Confirming that the LEAs and LOAs have reasonable and appropriate procedures for (i) ensuring that minimum

data elements forwarded to the State's information system for inputting into MSIX are accurate, complete, relevant, and timely, and (ii) the prompt provision to the Department or its contractor of any information that is requested in order to investigate whether to revise any allegedly inaccurate record or to respond to requests to amend any record in MSIX, as may be applicable; and

(c) Enabling ED to meet its responsibilities for MSIX under 5 U.S.C. § 552a(e)(10) (the Privacy Act).

(Authority: Insert OMB Number; 20 U.S.C. 6398)